

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1403 OF 2023

Ashok A. Jethwa Applicant

Versus

State of Maharashtra and Anr. Respondents

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Mr.Bhavesb Parmar a/w. Mr.Rahul Gaikwad, Garima Joshi, Reshma Nair, Amar Jhawar, Rajesh Sohani, Nikita Abhyankar and Mr.Vivek Akshali i/b. M/s. Gravitas Legal, Advocate for Applicant.

Ms.P.N. Dabholkar, APP for Respondent No.1 – State.

Ms.Neeta Solanki i/b. M/s.Unison Legal, Advocate for Respondent No.2.

PSI Korgaonkar, Kasturba Marg Police Station, Mumbai, present.

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**CORAM : RAJESH S. PATIL, J.
VACATION COURT**

DATED : MAY 12, 2023

P.C. :

1 This Anticipatory Bail Application is filed by a developer in C.R./First Information Report (“FIR”, for short) No.288 of 2023 registered with Kasturba Marg Police Station, Borivali, Mumbai, for offences punishable under Sections 406, 420, 34 of Indian Penal Code (“IPC”, for short) and Sections 5, 13 and 14 of Maharashtra Ownership flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.(“MOFA Act”, for short).

2 By order dated 2nd May 2023, the Anticipatory Bail

Application filed by Petitioner before the Sessions Judge, Dindoshi, Mumbai, was rejected. Therefore, the present Anticipatory Bail Application is filed seeking an Anticipatory Bail.

3 On the last occasion when the matter was argued before this Court during vacation on 8th May 2023, the parties agreed that they can settle the issue since the complainants are flat purchasers. Accordingly, the matter was adjourned and kept today. Today when the matter was called out, parties have tendered a photo copy of the affidavit of one Nirav Vikram Maniar, who is Respondent No.2 in this Application. For ease of reference, affidavit of Nirav Vikram Maniar which is filed in ABA 1402 of 2023, is reproduced hereinbelow:



AFFIDAVIT OF NIRAV VIKRAM MANIAR

I Nirav Vikram Maniar, residing at K-05, Ram Laxman Kute Co-operative Housing Society Ltd., Azad Lane, Off. S.V. Road, Andheri (West), Mumbai, 400058 state as follows:

1. I had purchased 3 Flats being Flat Nos. A-1401, A-1402 and A-2001 in the redevelopment project of New Shiv Kruti Co-operative Housing Society located at Triveni Condotum, CTS No. 544B, 544B(1) and 544B(2) measuring 1849 Sq. Mts. in total situated at Village Kanheri, Taluka Borivali, Mumbai Suburban, Kurla Wadi, Borivali (East) Mumbai 400066 having its Registration No. Maha RikA No. PS1800005589 which is developed by Triveni Developers vide the development agreement dated July 23, 2012.

* 2. I say that Flat No. A-1401 is a flat which I have got in lieu of the old premises and I have no complaints relating to the said flat being A-1401.

* 3. I say that a dispute arose between me and Triveni Developers and its partners being Mr. Mihir Jethwa and Mr. Ashok Jethwa in relation to the registration of agreement for sale of Flat No. A-1402 and A-2001, Pursuant to which I had

filed an FIR being FIR No. 288 of 2023 with the Kasturba Marg Police Station predominantly for the non-registration of the agreement for sale of the Flat No. A-2001.

4. I say that I have had several talks with Mr. Mihir Jethwa and Mr. Ashok Jethwa, and we have decided to amicably settle the dispute.

5. I say that it is agreed that Trivent Developers and its partners Mr. Mihir Jethwa and Mr. Ashok Jethwa shall register an agreement for the Flat No. A-2001. Pursuant to the understanding we i.e. myself and Trivent Developers through its partner Mr. Mihir Jethwa have registered an agreement for sale of Flat A-2001 on May 10, 2023.

6. I say that with regards to Flat A-1402, pursuant to the settlement talks, I have agreed and affirmed that I shall have no right, title and interest of whatsoever nature in the said Flat No. A-1402 and I shall not object if the said Flat being Flat No. A-1402 is sold and/or any third party rights are created in the said Flat No. A-1402.

7. I further say that the advance amount paid for the purchase of Flat No. A-1402 shall be adjusted towards the amount payable towards flat A-2001.





8. I say that since the agreement for sale of the Flat No. A-2001 is executed and registered I have no complaints and grievance against Triven Developers and its partners Mr. Mihir Jethwa and Mr. Ashok Jethwa.

9. I further say and I also understand that since the FIR is registered, Mr. Mihir Jethwa and Mr. Ashok Jethwa shall file appropriate proceedings for quashing of the FIR, and I assure them full cooperation in getting the FIR quashed as the parties have amicably settled their disputes and differences.

Solemnly declared by me at Mumbai)

On this day of May, 2023)

Before me,



Identified by me,

BEFORE ME

Shrinatayan Jantam Mishra
Shrinatayan Jantam Mishra
 B.COM LL.B.
 ADVOCATE HIGH COURT & NOTARY
 Genl. of India Gr. Mumbai, Thane & Maharashtra
 Jantam Mishra Chawl, Ganesha Road,
 Pagar, Kumbhar (E), Mumbai-400 111,
 Mobile No. : 9229428151/9631132215

10 MAY 2023



REGISTER No. /	
Sl. No. 460	Date: 10/5/2023

4 Respondent's advocate states they have agreed for a settlement and already the sale deed is executed and is been registered as far as flat Nos.A-2001, and Respondent No.2 has even agreed for quashing of original FIR No.288 of 2023 registered with Kasturba Marg Police Station, Borivali, Mumbai for offences punishable under Sections 406, 420, 34 of IPC.

5 For sake of clarification, it is stated that Flat No.1401 was a flat under redevelopment to be given to the mother and wife of Respondent No.2. There is no dispute as far as this flat is concerned since already an agreement for Permanent Alternate Accommodation Agreement (PAAA) has been entered into between the parties, and the flat is under construction. As and when the other tenants of the building get possession of their respective flat, the mother and wife of Respondent No.2 will be getting possession of that flat *viz.* 1401.

6 As far as Flat No.1402 is concerned, there is no dispute about the flat because the parties have agreed that Respondent No.2 or his family members have no concern with Flat No.1402, and Applicant is free to sell their flat to any third party as they wish.

7 As far as Flat No.A-2001 is concerned, the amounts paid by Respondent No.2 for Flat No.A-1402 have been adjusted against Flat No.A-2001.

8 Since Respondent No.2, the original complainant has no dispute with Applicant, a case is made out for granting of Anticipatory Bail Application.

9 Hence Applicant can be released on bail on imposing certain terms and conditions:

:: ORDER ::

(i) In the event of arrest of the Applicant in connection with C.R./FIR No.288 of 2023 registered with Kasturba Marg Police Station, Borivali, Mumbai, be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- (Rs.Fifteen Thousand only) with one or two sureties in the like amount;

(ii) Applicant shall not contact the complainant and other witnesses or tamper with the evidence, in any manner.

10 Anticipatory Bail Application is disposed of in the above terms.

11 Parties to act on authenticated copy of this order.

(RAJESH S. PATIL, J.)